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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,033	01/12/2005	Raymond Heinz	HEINZ, R ET AL 1 PCT	6560
25889	7590	06/19/2008		
COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			EXAMINER BOYER, CHARLES I	
			ART UNIT	PAPER NUMBER
			1796	
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			06/19/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/521,033	Applicant(s) HEINZ ET AL.	
	Examiner Charles I. Boyer	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-5 is/are allowed.
- 6) ☒ Claim(s) 1 and 6-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/17/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is responsive to applicants' amendment and response received March 17, 2008. Claims 1-8 are currently pending.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim is confusing because applicants' arguments appear to indicate that applicants are contemplating up to 60% of the total composition being a fragrance, however, the claim actually reads "60% of the fragrance or fragrance mixture". Sixty percent of the fragrance mixture is very different from 60% of the total composition. Similarly, the claim reads "90 to 40% of the solid or solid mixture" which is not the same thing as 40 to 90% of the total composition. If the claim is examined as it currently reads, it raises the question, where is the rest of the fragrance or solid if only 60% and 90% of the two components respectively are mixed together?

3. In addition, the claim remains confusing because at least one surfactant is a required component of the claim, however, most of the solids in the solid mixture, that is, fatty alcohols, fatty acids, and polyethylene glycol are not surfactants as the term is commonly understood in the art. Is it applicants' contention that these components are

themselves surfactants, or should it be understood that all of these Markush group solids contain at least one surfactant? The claim should be carefully rewritten for clarity.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Wierenga et al, US 5,002,681.

3. Wierenga et al teach a particulate fabric softener prepared by blending a perfumed particle into a molten fabric softener comprising a cationic surfactant, cetyl alcohol, and nonionic surfactant, followed by cooling and grinding the perfumed softener into particles (col. 10, examples III and IV). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that the reference does not teach the proportions or “surfactants” presently claimed. The examiner disagrees and maintains that as the actual proportions claimed remain unclear, and the reference teaches a fragrance and a fatty alcohol, the claim limitations are satisfied.

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4. Claims 1, 6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Young, US 4,152,272.

5. Young teaches a particulate fabric softener prepared by melting a cationic surfactant, tallow alcohol, and perfume, followed by cooling and grinding the perfumed softener into particles (col. 11, example 9). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that the reference does not teach the proportions or “surfactants” presently claimed. The examiner disagrees and maintains that as the actual proportions claimed remain unclear, and the reference teaches a fragrance and a fatty alcohol, the claim limitations are satisfied.

6. Claims 1, 6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Banowski et al, US 6,569,438.

7. Banowski et al teach a deodorant stick prepared by pouring a heated liquid into a mold, and allowing the liquid to cool and solidify, wherein the deodorant stick comprises octyl dodecanol, ethoxylated alcohol surfactant, fatty acid, and perfume oil (col. 6, example K9). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that the reference does not teach the proportions or “surfactants” presently claimed. The examiner disagrees and maintains that as the actual proportions claimed remain unclear, and the reference teaches a fragrance and a fatty alcohol, the claim limitations are satisfied.

8. Claims 1, 6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Joshi, US 4,017,574.

9. Joshi teaches a soap bar prepared by heating a base soap material and mixing in a fatty alcohol and perfume, allowing the soap to cool and solidify, wherein the soap bar comprises cetyl alcohol, soap base, and perfume (col. 5, example 3). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that the reference does not teach the proportions or “surfactants” presently claimed. The examiner disagrees and maintains that as the actual proportions claimed remain unclear, and the reference teaches a fragrance and a fatty alcohol, the claim limitations are satisfied.

10. Claims 1, 6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Sawin et al, US 5,916,546.

11. Sawin et al teach a deodorant stick prepared by pouring a heated liquid into a mold, and allowing the liquid to cool and solidify, wherein the deodorant stick comprises stearyl alcohol, ethoxylated alcohol surfactant, and perfume (col. 12, example I). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that the reference does not teach the proportions or “surfactants” presently claimed. The examiner disagrees

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and maintains that as the actual proportions claimed remain unclear, and the reference teaches a fragrance and a fatty alcohol, the claim limitations are satisfied.

12. Claims 1, 6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Suffis et al, US 5,378,468.

13. Suffis et al teach a deodorant stick prepared by pouring a heated liquid into a mold, and allowing the liquid to cool and solidify, wherein the deodorant stick comprises stearyl alcohol, propoxylated alcohol surfactant, and fragrance (col. 17, example B). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that the reference does not teach the proportions or “surfactants” presently claimed. The examiner disagrees and maintains that as the actual proportions claimed remain unclear, and the reference teaches a fragrance and a fatty alcohol, the claim limitations are satisfied.

Allowable Subject Matter

14. Claims 2-5 are allowed.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles I. Boyer whose telephone number is 571 272 1311. The examiner can normally be reached on M-Th 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571 272 1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Charles I Boyer
Primary Examiner
Art Unit 1796

/Charles I Boyer/

Primary Examiner, Art Unit 1796